IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

Crl.MC.No. 3893 of 2006()

AGAINST THE ORDER DATED 05/10/2006 IN CMP 3284/06 IN CC.176/2002 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

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PETITIONER:

P.M. PRAMOD, AGED 37,
S/O. P.M.N. KURUP,
PUTHIYA MADATHIL HOUSE,
IRINGAL AMSOM AND DESOM,
AYANIKKADU POST,
KOYILANDI TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS:

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1. N.V. PARAMESWARAN, AGED 36 YEARS,
S/O. RAJAN, `DHARSANA',
KOTTAOLI AMSOM AND DESOM,
KOZHIKODE TALUK.

2. STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/11/2006 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3893 OF 2006

Dated this the 24th day of November, 2006.

ORDER

The petitioner is the accused in a prosecution under Section 138 of the N.I Act. The learned counsel for the petitioner submits that the complainant's evidence is already closed and the accused who is examining himself under Section 315 CR.P.C is in the witness stand. He has been cross examined in part and not completed yet. At this stage, counsel submits, an application was filed by the complainant under Section 311 Cr.P.C producing certain documents requesting that he may be permitted to examine himself further. That application was opposed and the learned Chief Judicial Magistrate by the impugned order, which is produced as Annexure-A, permitted the production of documents and further examination of the complainant. The learned counsel for the petitioner submits that this procedure adopted by the learned Magistrate is incorrect. Under Section 311 Cr.P.C, witnesses can be summoned, but documents cannot be produced or received.

2. I am unable to accept the contentions of the learned counsel for the petitioner. The contention is inherently unsustainable. It omits to take note of the width, sweep and amplitude of the powers under Section 311 Cr.P.C. The learned Magistrate has in the order explained why further evidence has become necessary. There was a challenge against the capacity of the complainant to raise the amount to advance the loan to the accused to discharge which the cheque was allegedly issued. In the light of that challenge in cross examination, the complainant wanted further documents to be produced and himself to be recalled for further examination. In any view of the matter, I am unable to find any such vice vitiating the impugned order which would justify this Court invoking the powers under Section 482 Cr.P.C to interfere with that order.

3. The learned counsel for the petitioner submits that the accused is remaining part examined in the witness stand and at this stage, the complainant may not be permitted to recall himself and produce any further documents. I have no reason to assume that the learned Magistrate would proceed to further examine the complainant before cross examination of the

accused is completed. No directions in that regard also deserve to be issued.

4. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/